(1)

90-811

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

JOHN A. STILES, *Petitioner*,

v.

ROY D. BLUNT, SECRETARY OF STATE OF THE STATE OF MISSOURI, WILLIAM WEBSTER, ATTORNEY GENERAL OF THE STATE OF MISSOURI,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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November 20, 1990

QUESTIONS PRESENTED

1. Is the "rational relationship" test the applicable equal protection standard in reviewing restrictions on candidacy for a state office?

2. Is the "rational relationship" test met where the uncontroverted evidence shows that a restriction on candidacy is arbitrary in character and that the restriction has been arbitrarily enforced?

[Note: Petitioner reserves the right to argue Question 3 in the event certiorari is granted on both of the above questions, but does not include Question 3 among the reasons for the granting of certiorari.]

3. Whether the preamble to Missouri Revised Statutes §1.205 (1986) alters the calculation of age in the state of Missouri?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page

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The petitioner, John A. Stiles, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled proceeding on August 24, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 912 F.2d 260, and is reprinted in the appendix hereto, p. A-1, *infra*.

The memorandum decision of the United States District Court for the Western District of Missouri (Wright, S., C.J.) has not been reported. It is reprinted in the appendix hereto, p. A-25, *infra*.

JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. §1331; 28 U.S.C. §1343(a)(3) and (4); 28 U.S.C. §1983; and 28 U.S.C. §1988; the petitioner brought this suit in the Western District of Missouri. On March 22, 1990, the Western District rendered its final decision granting the respondents' motions to dismiss and entering judgment in favor of respondents. *See* p. A-28, *infra*.

On petitioner's appeal, the Eighth Circuit on August 24, 1990, entered a judgment and an opinion affirming the Western District's order. *See* p. A-1, *infra*. No petition for rehearing was sought.

The jurisdiction of this Court to review the judgment of the Eighth Circuit is invoked under 28 U.S.C. §1254-(1).

STATE CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

MISSOURI CONSTITUTION, Article III, Section 4. Qualification of representatives. Each representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not, then of the county or district from which the same shall have been taken.

MISSOURI REVISED STATUTES, Section 21.080. Qualifications of representatives. Each representative shall be twenty-four years of age, and next before the day of his election shall have been a voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not then of the county or district from which the same shall have been taken.

MISSOURI REVISED STATUTES, Section 1.205. Life begins at conception - unborn child, defined - failure to provide prenatal care, no cause of action for

1. The general assembly of this state finds that:

(1) The life of each human being begins at conception;

(2) Unborn children have protectable interests in life, health, and well-being;

(3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.

2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.

3. As used in this section, the term "**unborn children**" or "**unborn child**" shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.

4. Nothing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

STATEMENT OF THE CASE

Petitioner has been a qualified voter of Henry County, Missouri, and of the 119th Legislative District of Missouri, since 1985. On February 9, 1990, he instituted this action seeking a declaratory judgment and injunctive relief. The complaint alleged that the State of Missouri had denied petitioner's rights of free speech, association and travel by refusing to certify him as a qualified candidate for state representative for the 119th Legislative District of Missouri; that such refusal denied his right of equal protection of the laws; and that such refusal was a result of the State's misconstruction and misapplication of Missouri law in determining his age.

On February 12, 1990, petitioner moved the District Court to preliminarily enjoin the State from denying him the right to run for the Missouri House of Representatives for the 119th District; to be certified as an official and qualified candidate for the 119th District; and to be placed first on the Democratic party ballot for the August 7, 1990, primary election for the Missouri House of Representatives for the 119th District.

The District Court held a hearing on March 21, 1990, to determine the merits of petitioner's claims. At this hearing, the District Court heard evidence which, by agreement of the parties, went to the consideration of granting both the preliminary and permanent injunctions. The court then: (1) denied petitioner's motion for a preliminary injunction; (2) found that the State's refusal to allow petitioner a place on the ballot did not violate his constitutional rights; (3) found that a permanent injunction was not warranted; and (4) dismissed petitioner's cause of

action for failure to state a claim upon which relief could be granted.

Two aspects of the District Court's memorandum decision require consideration:

(1) The District Court rejected petitioner's claim that the application of Article III, §4 of the Missouri Constitution, and §21.080 of the Revised Statutes of Missouri (1986), to prevent him from being placed on the ballot as a candidate for state representative violated rights of petitioner that are so fundamental in nature as to require analysis under a stricter standard of review than the rational relationship test.

(2) The District Court rejected petitioner's claim that the rational relationship test had not been satisfied in this case.

REASONS FOR GRANTING THE WRIT

I.

The decision below that the rational relationship test is applicable to analyze restrictions on candidacy is in conflict with decisions of this Court and other Circuits.

The case at bar involves the right to be considered for public office, a right which is fundamental to the concept of democracy and which has been afforded constitutional protection. Turner v. Fouche, 396 U.S. 346, 362-363 (1970).

The right to run for elective office and the right to vote are equal in their fundamental importance, consequently, this Court has recognized that a restriction upon the voter's choice of candidates infringes upon a voter's rights just as much as a restriction upon the franchise itself. Powell v. McCormack, 395 U.S. 486, 547 (1969).

The minimum age requirement imposed by Mo. Const., art. III, §4, and Mo. Rev. Stat. §21.080 ("Minimum Age"), violates the Equal Protection Clause because, without reason or purpose, it discriminates against petitioner and those who are in the same class as him and it discriminates against qualified voters who might want to cast their votes for petitioner or someone in his same position. Anderson v. Celebrezze, 460 U.S. 780 (1983).

The Minimum Age absolutely bars from candidacy those who are younger than the prescribed age, thereby limiting the field of candidates from which the voters can

choose, and to this extent restricts the voters' opportunity to cast an effective ballot, since the state can effectively prohibit the candidate of the voters' preference from being allowed to seek public office. The Minimum Age denies persons the right to vote for candidates of their choice for the Missouri House of Representatives solely because of the candidate's age, denying to those persons the right of free expression and association for the advancement of political beliefs as well as equal protection of the laws. Williams v. Rhodes, 393 U.S. 23 (1968); Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966).

Considering the fundamental nature of the rights infringed upon as a result of the Minimum Age, the State should be required to justify the ballot restriction under a stricter standard of review than the "Rational Relationship" test.

In Bullock v. Carter, 405 U.S. 134 (1972), the Court examined candidate restrictions by looking to the impact they had on voters, and stated that the appropriate standard of review depends on the nature and extent that any particular restriction has upon voters. Thus, the nature of each restriction must be considered individually.

In Clements v. Fashing, 457 U.S. 957 (1982), the Court exercised independent judicial review to insure that the regulation of the voting process reasonably promoted important ends and did not unreasonably restrict the voting rights of any class of individuals. The Court stated:

> In assessing challenges to state election laws that restrict access to the ballot, this Court has not formulated a litmus-paper test for separating

> those restrictions that are valid from those that are invidious under the Equal Protection Clause. Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions. Our ballot access cases, however, do focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity.

Id. at 963-964 (citations omitted; emphasis supplied).

One year later in Anderson v. Celebrezze, 460 U.S. 780, 786 (1983), the Court recognized that "the impact of candidate eligibility requirements on voters implicates basic constitutional rights." The analysis in Anderson involved the use of a balancing test, as follows:

> [T]he State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions. Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions. Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First

> and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Id. at 788-789 (citations omitted; emphasis supplied).

The interests impaired by candidate restrictions are not merely those of parties or individual candidates -- the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance -- thus, the right of a party or of an individual to a place on a ballot is entitled to constitutional protection. Lubin v. Panish, 415 U.S. 709, 716 (1974).

In Anderson v. Celebrezze, 460 U.S. 780 (1983), the Court stated:

> [T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters. Our primary concern is with the tendency of ballot access restrictions to limit the field of candidates from which voters might choose. . . . The impact of candidate eligibility requirements on voters implicates basic constitutional rights.

Id. at 786 (citations omitted).

In the Anderson case, the Court noted its reliance on the Equal Protection analysis in a number of their prior election cases, stating, "These cases, applying the 'fundamental rights' strand of equal protection analysis, have identified the First and Fourteenth Amendment rights implicated by restrictions on the eligibility of voters and candidates, and have considered the degree to which the State's restrictions further legitimate state interests." *Id.* at 786 n. 7.

Restrictions on candidacy for elective office impair the right of voters to cast a ballot for the candidate of their choice, a right protected by the Fourteenth Amendment Due Process and Equal Protection clauses, and the right of persons to associate in the expression of views in a political campaign, which is protected by the First Amendment. Anderson v. Celebrezze, 460 U.S. 780, 788 (1983); Cousins v. Wigoda, 419 U.S. 477, 487 (1975). Therefore, the judiciary must independently scrutinize the basis for ballot access restrictions to insure that they are a reasonable, non-discriminatory means of promoting important state interests. Anderson, *supra*.

The right involved in the case at bar, as in Williams v. Rhodes, 393 U.S. 23 (1968), is the right to run for public office, a right which is firmly rooted in the freedom of association and, therefore, falls within the protections of the First Amendment. In the Williams case, the Court observed that ballot access requirements trench upon two constitutionally protected rights, stating as follows:

> In determining whether or not a state law violates the Equal Protection Clause, we must consider

> the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. In the present situation the state laws place burdens on two different, although overlapping, kinds of rights -- the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. . . . Similarly we have said with reference to the right to vote: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

Id. at 30-31 (citations omitted).

In recognizing a federal constitutional right "to be considered for public service without the burden of invidiously discriminatory disqualifications," the Court in Turner v. Fouche, 396 U.S. 346 (1970), held that, "The state may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate the Equal Protection Clause." *Id.* at 362-363.

After the Turner decision, other courts recognized that the right to run for political office is a protected federal right. *See* Johnson v. Cushing, 483 F.Supp. 608, 612 (D. Minn. 1980); Antonio v. Kirkpatrick, 453

F.Supp. 1161, 1164 (W.D. Mo. 1978); Mancuso v. Taft, 476 F.2d 187, 195-196 (1st Cir. 1973); Stapleton v. Clerk for City of Inkster, 311 F.Supp. 1187 (E.D. Mich. S.D. 1970).

The Stapleton court struck down a restriction on candidacy, stating:

> It appears to this court that the reasons given for requiring the compelling interest standard in voting cases are equally applicable to cases challenging qualifications for public office; in both situations the challenge is directed to the assumption that the institutions of state government are structured so as to fairly represent all the people. . . . It seems clear to this court that a restriction upon who may be a candidate necessarily affects the efficacy of a person's vote. The effectiveness of the franchise can just as certainly be curtailed by restricting the group from whom candidates may be drawn as by restricting those entitled to cast a vote or by mal-apportioning a legislative body.

Id. at 1190.

The Stapleton court noted that the Turner decision did not determine whether the compelling interest standard should be applied to qualifications to hold office, and went on to evaluate the challenged restriction under both the compelling interest test and the rational relationship test, and held, at 1193, that it failed under both standards.

In McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980), the Eighth Circuit Court of Appeals was presented with a constitutional challenge to a North Dakota statute which required a political party to obtain a minimum number of

qualified signatures on a petition in order for its candidates to gain access to the ballot. In invalidating the statute, the court addressed the difficult legal issues before them as follows:

> Ballot access statutes are not susceptible of easy analysis, nor is the appropriate standard of review always easy to discern. . . . The district court correctly noted that statutes affecting the right to vote must cause a discrimination "of some substance" before the compelling state interest test is triggered. However, this burden of proof has not been difficult to meet because "voting is of the most fundamental significance under our constitutional structure" and requires jealous protection. We have noted in the past that access restrictions must be reasonable, must be justified by reference to a compelling state interest, and may not go beyond what the state's compelling interests actually require, because the fundamental right to vote is inseparable from the right to place the candidate of one's choice on the ballot. . . . Under this exacting standard of scrutiny, we conclude that North Dakota's access restrictions are unnecessarily oppressive, and hence unconstitutional.

Id. at 1163 (citations omitted).

Similarly, in striking down a Nebraska statute restricting the ballot access of candidates belonging to a new political party, in MacBride v. Exon, 558 F.2d 443 (8th Cir. 1977), the Eighth Circuit recognized the rights of the state, as well as the rights of the potential candi-

dates and their supporters, and held that the compelling interest test was applicable:

> [T]he power of a state to restrict the right of qualified electors to vote for candidates of their choice and the right of candidates, including independent candidates, to run for office is severely circumscribed by the Constitution. Restrictive measures are constitutionally suspect, and if they are to pass constitutional muster, they must be reasonable and must be justified by reference to a compelling state interest. The measures adopted by a state may not go beyond what the state's compelling interests actually require, and the broad and stringent restrictions or requirements cannot stand where more moderate ones would do as well.

Id. at 448.

In Kramer v. Union Free School District, 395 U.S. 621 (1969), the Court again held that where a right as fundamental as access to the ballot is at issue the state is required to do more than merely show a rational basis for a restrictive classification, reasoning that, "This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government." *Id.* at 626 (emphasis supplied).

In the present case, petitioner has challenged State-imposed restrictions on what is, if not a fundamental right, a right so intertwined with fundamental rights as to be inseparable. *See* Anderson v. Celebrezze, 460 U.S.

780 (1983). If it were possible to separate these rights and characterize them individually, each would still be characterized as, if not a fundamental right, at the very least, a quasi-fundamental right. It follows, therefore, that the restriction challenged here must be subject to at least the same intermediate standard of review as statutes which discriminate against a quasi-suspect class, such as gender and illegitimacy; *see* Craig v. Boren, 429 U.S. 190, 207 (1976); and Mills v. Habluetzel, 456 U.S. 91 (1982); or statutes which impinge upon a quasi-fundamental right, such as education; *see* Plyler v. Doe, 457 U.S. 202 (1982).

II.

The decision below that the restrictions on candidacy presented herein are rationally related to a legitimate state interest raises important and unresolved problems.

Petitioner does not dispute the State's power to regulate the terms and mechanics of its own elections, nor does he challenge the correlative power of the State to establish reasonable age minimums for state and local offices. Prior to the Twenty-Sixth Amendment, the State's power to impose reasonable minimum age requirements on the right to vote was upheld, at least under the Equal Protection Clause of the Fourteenth Amendment, by the Supreme Court in Oregon v. Mitchell, 400 U.S. 112 (1970). However, petitioner submits that the restriction challenged here must fall even when measured by the traditional Rational Relationship test because it rests on

grounds wholly irrelevant to the achievement of a valid state objective.

In Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978), the Eighth Circuit held, at 1149-50, that, "even under conventional standards of review, a State cannot achieve its objectives by totally arbitrary means; the criterion for differing treatment must bear some relevance to the object of the legislation."

The most frequently cited reasons for imposing an age restriction are the state's interest in the maturity of its office holders, and its interest in assuring that its public officials reach the age of majority in order to have the legal capacity to transact the business required to carry out their official duties. For example, in Human Rights Party of Ann Arbor v. Secretary of State for Michigan, 370 F.Supp. 921, 922-923 (E.D. Mich. S.D. 1973), the challenged statute excluded persons under 18 years of age from eligibility for election to a board of education. The plaintiff was a 15-year-old who wanted to run for a school board position. The issue presented to the Court was whether the state had the power to impose any age restriction at all. The language of the court indicates that, at that time, it recognized only the rational basis test and the compelling interest test. The Court refused to apply the compelling interest test because it felt that doing so would impose an insurmountable burden on the state. Realistically, however, it seems that the state could have met the higher standard in that case. Surely, the state has an important or substantial, if not compelling, interest in assuring that its public officials have reached the age of majority in order to have the legal capacity to transact the business incumbent upon holders of those offices.

The challenge here is to the unreasonableness of the Minimum Age, which violates the rights of political association of the voters in his district by preventing them from banding together to support a candidate of their choice who is between the ages of 18 and 24; thus effectively disparaging their vote by denying them the opportunity to vote for the candidate of their choice on election day.

In this case, it is difficult to conceive how the requirement of the minimum age of 24 years is reasonable or necessary to effectuate any legitimate state interest. The State's objectives, if there be any, may surely be achieved through far less restrictive means.

While perfection in making classifications is not required; *see* Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 158, 314 (1976); statutes affecting constitutional rights must be drawn with precision and must be tailored to serve their legitimate objectives; *see* Dunn v. Blumstein, 405 U.S. 330, 343 (1972). In other words, to satisfy the Equal Protection Clause of the Fourteenth Amendment, classifications which limit the franchise must be so tailored that the exclusion of petitioner and the members of his class is necessary to achieve the articulated State goal. Kramer v. Union Free School District, 395 U.S. 621, 632 (1969).

Even if the Minimum Age were found to further some State objective, it is clear that the instrument chosen by the State of Missouri to reach any such objective is far too imprecise to justify its continued use. In Shelton v. Tucker, 364 U.S. 479 (1960), the Court stated that:

> [E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be

> pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose.

Id. at 488.

By ratifying the Twenty-Sixth Amendment, the states conceded that citizens 18 and over are capable of intelligent and responsible exercise of the right to vote. It is paradoxical that these same persons are conclusively presumed by the State of Missouri to be substantially less able to perform the duties of public office until they reach the age of 24.

In many of the cases challenging restrictions on candidacy, the only justification offered for the challenged restriction is that historically it has always been that way. *See* Manson v. Edwards, 482 F.2d 1076 (6th Cir. 1973); State ex rel. Gralike v. Walsh, 483 S.W.2d 70 (Mo. banc 1972). This reasoning, of course, is equally applicable to many voter restrictions which have been struck down as unconstitutional. Historically, only white men had the right to vote. Now men and women can vote, regardless of race. Historically, only persons 21 years of age and over were allowed to vote. Now the voting age is 18. Times are changing. Likewise, as the Court recognized in Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966), "Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change." Harper, *supra* at 669 (emphasis in original).

The District Court found that Missouri history reveals at least four instances where the Minimum Age for the

Missouri House of Representatives was ignored altogether. Thus, it has been shown that the Minimum Age has been enforced in such a manner as to make it violative of the Equal Protection Clause. In Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71 (1988), this Court held that arbitrary and irrational discrimination violates the Equal Protection Clause under even the most deferential standard of review.

CONCLUSION

For these various reasons, this petition should be granted. Petitioner reiterates that Question 3 is presented herein, not as a reason for granting certiorari, but because in the posture of this case this is the only opportunity for petitioner to seek review of the ruling of the Eighth Circuit that the petitioner's age should not be calculated from his date of conception pursuant to Missouri Revised Statutes §1.205 (1986).

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 90-1512

JOHN STILES,	*
	*
Appellant,	*
	* Appeal from the
v.	* United States
	* District Court
ROY D. BLUNT;	* for the Western
WILLIAM L. WEBSTER,	* District of
	* Missouri
Appellees.	*

Submitted: June 13, 1990

Filed: August 24, 1990

Before McMILLIAN, Circuit Judge, HENLEY, Senior Circuit Judge, and BOWMAN, Circuit Judge

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McMILLIAN, Circuit Judge.

John A. Stiles (appellant) appeals from a final order entered in the United States District Court for the Western District of Missouri[1] denying his motion for a preliminary injunction to prevent Roy Blunt, the Secretary of State of the state of Missouri, and William Webster, Attorney General of the State of Missouri (appellees), from refusing to certify him as a Democratic candidate in the August 1990 primary for the Missouri House of Representatives and dismissing his cause of action for failure to state a claim upon which relief could be granted. For reversal, appellant argues that (1) the district court erred in reviewing the minimum age requirement for Missouri State Representative under the rational relationship standard of equal protection review; (2) that even assuming rational relationship review is appropriate, the district court erred in holding that the minimum age requirement is rationally related to legitimate state interests; and (3) the district court erred in refusing to calculate his age from the date of conception in accordance with Mo. Ann. Stat. §1.205 (Vernon Supp. 1990)(Section 1.205), the preamble to the Missouri Senate Committee Substitute for House Bill 1596 (1986 Missouri Abortion Act), which states that life begins at conception. For the reasons discussed below, we affirm the order of the district court.

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[1]The Honorable Scott O. Wright, Chief Judge, United States District Court for the Western District of Missouri.

I.

The facts of this case are undisputed. On January 9, 1990, appellant made a timely offer to file his declaration of candidacy for Missouri State Representative on the Democratic ballot. The Secretary of State acknowledged receipt of appellant's declaration of candidacy, but refused to certify him as a candidate because he would not be 24 years old on the date he would be sworn into office as required by Mo. Const. Art. III, §4 (Vernon 1970) and Mo. Ann. Stat. §21.080 (Vernon 1970 & Supp. 1990)(Section 21.080).

Appellant's date of birth is April 11, 1967, and his date of conception is prior to November 1, 1966. Appellant is a resident of Windsor, Missouri, in Henry County, and is a taxpayer and a registered and qualified voter of Windsor, which is located in the 119th Legislative District. Appellant is a member of the Democratic party, and except for his age, is otherwise qualified to hold the office of Missouri State Representative. If appellant won the election, he would be sworn in and begin serving his term on approximately November 1, 1990. Calculating appellant's age from his date of birth, he will be a little over 23-1/2 years old on November 1, 1990.

The parties stipulate that qualified voters in the 119th Legislative District, though not parties to this lawsuit, have indicated a willingness to vote for appellant if he ran for office. The district court also held that the Missouri House of Representatives seated

persons under the age of 24 on four occasions between 1824 and 1935.[2]

On February 12, 1990, appellant filed a Petition for Declaratory Judgment and Injunctive Relief ("Petition") in federal district court, alleging that the minimum age requirement violated the equal protection clause because it deprived him of his right to run for public office and violated the fundamental rights of the voters interested in supporting him. In the alternative, appellant argued that his age should be calculated from the date of his conception rather than his date of birth, which, according to Section 1.205 is when life begins.

After holding an evidentiary hearing, the district court denied appellant's requests for declaratory and injunctive relief and dismissed his petition for failure to state a claim upon which relief could be granted. The district court held that the minimum age requirement did not violate appellant's constitutional rights or the fundamental rights of the voters of the 119th Legislative District to free speech, voting, and participation in government. The district court further held that appellant's age should be calculated from his date of birth, not from his date of conception pursuant to Section 1.205. Appellant filed a timely appeal of the district court

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[2]Spencer Pettis, age 22, of St. Louis, was seated in 1824; John B. Henderson, age 22, of Pike County, was seated in 1848; Joseph Pulitzer, age 22, of St. Louis, was seated in 1870; and Carleton Fulbright, age 22, of Ripley County, was seated in 1935. The record does not reflect why these individuals were seated in violation of the minimum age requirement.

order, and, pursuant to appellant's request, we expedited our consideration of this appeal.

II.

The minimum age requirement for State Representative is set forth in the Missouri Constitution:

> Each [state] representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not, then of the county or district from which the same shall have been taken.

Mo. Const. Art. III, §4 (emphasis added).[3] This constitutional requirement is codified at Section 21.080. Missouri does not have minimum age requirements for the statewide offices of Secretary of State, State Treasurer, or State Attorney General but Article IV, Section 3 of the Missouri Constitution does require that the Governor be at least 30 years of age. This is the first time that the constitutionality of Missouri's minimum age requirement has been challenged, but other provi-

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[3]Missouri has required that state representatives be at least 24 years old since 1820, when a provision similar to Art. III. §4 was included as Art. III, §3 of the Missouri Constitution of 1820.

sions of Art. III, §4 and Mo. Ann. Stat. §21.080 have been contested and upheld in the past.[4]

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[4]For example, in Steinmetz v. Smith, 613 S.W.2d 157, 158 (Mo. Ct. App. 1981), the Missouri Court of Appeals held that a trial court has jurisdiction to prevent the Board of Election commissioners from placing the name of an unqualified candidate on the ballot and, pursuant to Mo. Ann. Stat. §21.080, a nominee who was not a qualified voter for two years before the date of election was not a qualified candidate for the office of Missouri State Representative. In state ex rel. Burke v. Campbell, 542 S.W.2d 355, 358 (Mo. Ct. App. 1976), the Missouri Court of Appeals noted that the state may establish and enforce reasonable restrictions for officeholders, and held the requirement in Art. III, §4 that a candidate for state representative be a qualified voter in the state for two years prior to the election did not deny equal protection.

A. Standard of Review

When a litigant challenges a governmental classification under the equal protection clause, we must first determine the appropriate standard of review. Determining the proper standard of review is of more than academic interest because the level of scrutiny applied often effectively determines whether a challenged classification is upheld.[5] There are three primary levels of equal protection review. The most deferential level of review is the rational relationship test, which is typically used to analyze economic regulations not involving suspect classes or fundamental rights. Under this test, a challenged classification "will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan v. Maryland, 366 U.S. 420, 42 (1961); see also Allied Stores, Inc. v. Bowers, 358 U.S. 522, 530 (1957). The rational relationship test accords substantial deference to the government both in determining what constitutes a legitimate governmental objective and in selecting the means to accomplish the chosen

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[5]Classifications reviewed under the rational relationship are almost invariably upheld. In contrast, when a classification is subjected to strict scrutiny, it is almost always found unconstitutional. See Gunther, The Supreme Court, 1971 Term--Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. L.Rev. 1, 8 (1972) (strict scrutiny review is "strict" in form but usually "fatal" in fact).

objective.[6] Under the rational relationship test, we will uphold a challenged classification so long as it bears a rational relationship to a governmental objective not prohibited by the Constitution.

"Strict scrutiny" is the most exacting standard of equal protection review. Strict scrutiny review is applied when a challenged classification affects a fundamental constitutional right or a suspect class. See Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 312 (1976) (per curiam) (Murgia). Under this standard, we will uphold a classification only if it is "necessary to promote a compelling state interest." Kramer v. Union Free School District No. 15, 395 U.S. 621, 627 (1969). Unlike rational relationship review, where the classification is presumed constitutional and the plaintiff bears the burden of proving otherwise, the strict scrutiny test requires the government to prove that it has a compelling interest in the classification it has selected. See Shapiro v. Thompson, 394 U.S. 618, 634 (1969).

Although the Supreme Court has been reluctant to explicitly acknowledge a third level of equal protection review, it has on occasion applied what can be characterized as an intermediate level of review to

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[6]L. Tribe, American Constitutional Law §16-2, at 1442-43 (2d ed. 1988) ("[t]he traditional deference both to legislative purpose and to legislative selections among means continues, on the whole, to make the rationality requirement largely equivalent to a strong presumption of constitutionality") (emphasis in original) (citing cases).

classifications involving gender, alienage, or legitimacy.[7] Under this standard, the challenged classification must be "substantially related" to "important governmental objectives." Craig v. Boren, 429 U.S. 190, 197 (1976). In recent years, the Supreme Court has further muddied the doctrinal waters by sometimes reviewing the legitimacy of challenged classifications without stating a clear standard of review. See 2 R. Rotunda, J. Nowak & J. Young, Treatise on Constitutional Law: Substance and Procedure, §18.3, at 328 (citing cases) (1986). Keeping this overview in mind, we address the appropriate standard of review in this case.

Appellant argues that the minimum age requirement should be subjected to strict scrutiny review because the requirement affects a suspect class and infringes on fundamental rights. Appellant argues that age is a suspect class and that the requirement impinges on his fundamental right to be a candidate as well as

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[7]See e.g., Craig v. Boren, 429 U.S. 190, 197 (1976) (intermediate scrutiny applied to gender classification permitting females between 18 and 21 to purchase 3.2% beer while denying the same privilege to males between 18 and 21); Plyler v. Doe, 457 U.S. 202, 223-224 (1982) (intermediate scrutiny applied to Texas statute withholding state funds for the education of children of undocumented aliens and authorizing local school districts to exclude such children); Mills v. Habluetzel, 456 U.S. 91, 99 (1982) (intermediate scrutiny applied to Texas statute of limitations requiring that paternity suits to identify natural fathers of illegitimate children be brought before the child is one year old).

the voters' fundamental right to support the candidate of their choice. Appellant argues that because the minimum age requirement restricts the voters' choice of candidates, it is similar to state statutes restricting ballot access, which have been subjected to strict scrutiny review. See, Bullock v. Carter, 405 U.S. 134 (1972) (Bullock) (filing fee for primary elections); Williams v. Rhodes, 393 U.S. 23 (1968) (minimum signature requirement for ballot access); Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966) (poll tax). Appellant argues that the age requirement should be at least subjected to intermediate scrutiny or reviewed under the balancing test for election regulation cases set forth in Anderson v. Celebrezze, 460 U.S. 780, 789 (1983) (Anderson).[8]

Appellees respond that rational relationship review is appropriate because neither a suspect class nor a fundamental right is implicated by the minimum age requirement. Citing Murgia, 427 U.S. at 313, the appellees first point out that the Supreme Court has never recognized age to be a suspect class. Appellees further contend that age restrictions affecting young adults should be reviewed with particular deference because they merely postpone rather than absolutely

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[8]In Anderson v. Celebrezze, 460 U.S. 780, 789 (1983) (Anderson), the supreme Court held that when state election regulations burden the voters' rights to associate or choose among candidates, courts must identify the state's interests in the regulation, the burdens imposed on the voters by the regulation, and balance the respective benefits and burdens to determine if the regulation is constitutional.

prohibit the enjoyment of a right. Appellees next argue that the right to run for office, unlike the right to vote, is not a fundamental right. Appellees contend that the voting restriction and ballot access cases cited by appellant are inapplicable here, because this is a candidate qualification case rather than a ballot access case. Appellees point out that states are permitted broad latitude in regulating and supervising the state election process, and that both the states and the federal government have traditionally imposed age requirements on candidates and voters. Appellees contend that imposing strict scrutiny review on its minimum age requirement would result in undue interference with the state's right to structure its own electoral process.

Because neither a suspect class nor a fundamental right is implicated by the minimum age requirement, we hold that the district court was correct in reviewing Art. III, §4 and Section 21.080 under the rational relationship test. First, it is abundantly clear that age is not a suspect class that triggers strict scrutiny review. In Murgia, the Supreme Court upheld a statute requiring uniformed police officers to retire at the age of 50. 427 U.S. at 316-317. The Court held that classification by age "does not define a 'discrete and insular' group, United States v. Carolene Products Co., 304 U.S. 144, 152-153 n. 4 (1938), in need of 'extraordinary protection from the majoritarian political process.'" Id. at 313. Following Murgia, courts have routinely reviewed age classifications under the rational relationship test. See, e.g., Gregory v. Ashcroft, 898 F.2d 598, 604 (8th Cir. 1990) (Missouri mandatory retirement requirement for state judges); Zielasko v. State of Ohio, 873 F.2d 957, 961 (6th Cir. 1989) (Ohio manda-

tory retirement requirement for state judges); Price v. Cohen, 715 F.2d 87, 92 (3rd Cir. 1983) (Pennsylvania statute disfavoring welfare recipients between ages of 18 and 45), cert. denied, 465 U.S. 1032 (1984); Arritt v. Grisell, 567 F.2d 1267, 1272 (4th Cir. 1977) (West Virginia statute requiring that police officer applicants be between the ages of 18 and 35). Furthermore, we agree with the state that it is particularly appropriate to apply a deferential standard of review to age requirements affecting young people because such requirements do not result in an absolute prohibition but merely postpone the opportunity to engage in the conduct at issue. See, Zielasko, 873 F.2d at 962 (Jones, J., dissenting); (minimum age requirements only temporarily burden a right); Felix v. Milliken, 463 F. Supp. 1360, 1373 (E.D. Mich. 1978) ("while discrimination against the elderly at a particular age imposes a disability that is never removed, drawing lines that affect young people has only a temporary effect").

The minimum age requirement also does not affect a fundamental right. Contrary to appellant's assertion, the right to run for public office, unlike the right to vote, is not a fundamental right. Bullock, 405 U.S. at 142-143. See Zielasko, 873 F.2d at 961; Hatten v. Rains, 854 F.2d 687, 693 (5th Cir. 1988), cert. denied, 109 S.Ct. 3156 (1989). Nor is strict scrutiny review appropriate based on the alleged impingement on the choice of candidates available to the voters of the 119th Legislative District. To begin with, we are unpersuaded that appellant has standing to raise the voters' claims. While the parties have stipulated that qualified voters in the 119th Legislative District are interested in voting for appellant, no such voter has

joined this action as a party plaintiff. In those cases that assess the impact of candidate eligibility requirements ont he rights of voters, one or more voters supporting the candidate are typically parties to the action. See, e.g., Anderson, 460 U.S. at 783 (suit brought by independent presidential candidate John Anderson and three registered voters); Bullock, 405 U.S. at 136 (voters supporting candidates intervened in action); Zielasko, 873 F.2d at 958 (registered voter supporting candidacy of Judge Zielasko a plaintiff in action). In order to avoid unnecessary or imprudent adjudications, we ordinarily prohibit litigants from raising the claims of third parties not before the court. See Singleton v. Wulff, 428 U.S. 106, 113-14 (1976) (plurality opinion). The prohibition of third party standing is relaxed when the litigant is "the only effective adversary" of the third party's rights. See Barrows v. Jackson-, 346 U.S. 249, 259 (1953). However, appellant has not explained why no voter from the 119th Legislative District has joined the suit or why he is the only effective adversary of the voters' rights. See Whitmore v. Arkansas, 110 S. Ct. 1717, 1727 (1990) (for "next friend" standing in habeas corpus actions, next friend must provide an adequate explanation why the real party in interest cannot prosecute the action on his or her own behalf). Our serious doubts about appellant's standing to raise the voters' claims are not resolved by the inclusion of affidavits from qualified voters in the 119th Legislative District in his Petition, or by the district court's observation that qualified voters wish to consider appellant as a candidate when they vote for Missouri State Representative.

Even assuming that appellant has standing to raise the voters' claims, we hold that we need not apply

heightened scrutiny to the minimum age requirement because its impact on the rights of voters is de minimus. Like virtually all election regulations, the minimum age requirement doe shave some effect on the rights of voters.[9] We acknowledge that the minimum age requirement tends "to limit the field of candidates from which voters might choose," Bullock, 405 U.S. at 143, but find the burden on the voters' rights to be incidental for two major reasons. first, the burden is only temporary. Appellant is not forever precluded from running for state representative. Should he decide to run for state representative after he attains 24 years, voters interested in supporting him can vote for him at

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[9]In Bullock v. Carter, 405 U.S. 134, 143 (1972), the Supreme Court discussed the interrelationship between candidate eligibility requirements and the fundamental rights of voters:

> {T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters. Of course, not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review. . . . In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.

405 U.S. at 143 (citations omitted).

that time. While it is true that voters will not be able to vote for appellant in this year's election, their fundamental rights of voting, speech, and association do not confer upon them an absolute right to support a specific candidate regardless of whether he or she has satisfied reasonable eligibility requirements. See Zielasko, 873 F.2d at 961 ("no one is guaranteed the right to vote for a specific individual"). Secondly, and more important, the minimum age requirement is content neutral and applies to candidates of all political parties. The requirement does not deprive voters of their rights to vote for, associate with, or speak out on behalf of candidates representing minor parties or unusual view points. See Anderson, 460 U.S. at 787 ("[t]he right to vote is heavily burdened if that vote may be cast only for major party candidates at a time when other parties or other candidates are clamoring for a place on the ballot") (citations omitted); Blassman v. Markworth, 359 F. Supp. 1, 7 (N.D. Ill. 1973) (Blassman) (minimum age requirement for school board membership not "shown to preclude or substantially narrow the field of candidates who espouse any given political, ideological, and/or socio-economic views"). Accordingly, we join the other courts that have considered this issue in holding that minimum age requirements need only rationally further a legitimate state interest to be constitutional.[10]

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[10]Assuming that appellant has standing to raise the voters' claims, the author believes that it is more appropriate to analyze the minimum age requirement under the Anderson balancing test. I believe the Supreme Court intended the Anderson test to be applied whenever election regulations

allegedly affect a citizen's "right to vote and his right to associate with others for political ends." 460 U.S. at 788. Even under the Anderson test, however, the minimum age requirement passes constitutional muster. Under Anderson, the nature and magnitude of the burden imposed by the minimum age requirement must first be considered. Id. at 789. Appellant has been deprived of the right to be a candidate for the Missouri legislature, but only temporarily. Unlike the right to vote, the right to run for office is not a fundamental right. Likewise, voters in the 119th Legislative District will be temporarily deprived of the opportunity to vote for appellant and individuals in appellant's age group. Although the right to vote is fundamental, citizens do not have a fundamental right to vote for any particular candidate. Moreover, the age requirement does not favor or disfavor particular viewpoints or political parties. The second factor considered under Anderson is the state interest served by the regulation. Id. The minimum age requirement serves Missouri's interest in ensuring that its legislators have some degree of maturity and life experience before taking office. This is a legitimate interest. Although appellant may well possess sufficient maturity to hold office, the state's interest in maturity and experience entitles it to draw the line somewhere, and the line it has drawn is not unreasonable. Application of the Anderson balancing test establishes that the minimum age requirement imposes only temporary, incidental burdens on the rights of appellant and the voters, which are justified by the state's

See Manson v. Edwards, 482 F.2d 1076, 1078 (6th Cir. 1973); Human Rights Party v. Secretary of State of Michigan, 370 F. Supp. 921, 924 (E.D. Mich.), aff'd, 414 U.S. 1058 (1973); Blassman, 359 F. Supp. at 6-8.[11]

B. Application of Rational Relationship Test

Having determined that rational relationship review is appropriate, we have little trouble in conceiving of legitimate state interests that are served by the minimum age requirement. Appellant contends that

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interest in insuring that its legislators possess some maturity and experience.

[11]For the same reasons, we disagree with appellant's argument that the minimum age requirement should at least be subjected to intermediate equal protection scrutiny. As demonstrated above, the minimum age requirement does not affect a suspect class or a fundamental right. At most, it causes an incidental, temporary burden on the rights of appellant and the voters. We also decline appellant's invitation to recognize age as a quasi-suspect class or the right to be a candidate for public office as a quasi-fundamental right. Because the Supreme Court has never enthusiastically embraced intermediate equal protection review and has refused to extend it beyond classifications affecting gender, illegitimacy, and alienage, we are unwilling to apply intermediate scrutiny to new areas without guidance from the Supreme Court.

even if rational relationship review is appropriate, the minimum age requirement should fall because it does not further a legitimate governmental objective. Appellant contends that the state has failed to articulate any interest that is advanced by the requirement. Appellant argues that the minimum age requirement does not meet the rational relationship test because most other states do not require state representatives to be 24 years old and because the requirement excludes qualified candidates who could strengthen the political process by filling candidate slots in uncontested elections. Appellant further contends that the minimum age requirement is not rational because it has been arbitrarily enforced and does not apply to statewide offices. Appellees respond that the minimum age requirement is rationally related to its legitimate interest in having lawmakers with maturity and experience. Appellees further point out that the minimum age requirement can be changed by a constitutional amendment, and argue that the issue should be left to the political process.

We agree with the district court's holding that the minimum age requirement is rationally related to the state's legitimate interest in having qualified representatives. Missouri's objective of insuring that its lawmakers have some degree of maturity and life experience is constitutional and the minimum age requirement is a legitimate means of accomplishing this objective. Of course, whether or not these reasons were actually considered in enacting the minimum age requirement is irrelevant. Zielasko, 873 F.2d at 961. Similarly, whether we believe the state "was unwise in not choosing means more precisely related to its primary purpose is irrelevant. . . . That the[is] reason[] at

least arguably provide[s] a rational basis for [the minimum age requirement] is sufficient for [Mo. Const. Art. III, §4 and Section 21.080] to survive under the constitutional standard we have described." Id. at 961-62 (citations omitted).

We are unmoved by appellant's contention that the minimum age requirement is irrational because Missouri is one of only seven states that imposes an age requirement in excess of 21 years on the right to run for state representative. We are not permitted to substitute our view of what year an individual should be permitted to run for state representative. See Blassman, 359 F.Supp. at 8. The issue of whether the minimum age should be 18, 21, 24 or some other age is a classic example of legislative line-drawing that we must leave undisturbed. The minimum age requirement is also not irrational even if it restricts the pool of qualified candidates and makes it more difficult to recruit candidates, thus resulting in more uncontested elections which weaken the vitality of the political process. While contested elections may indeed enhance the responsiveness and robustness of our political system, we believe that these arguments are best made to the Missouri legislature or the Missouri citizens in the context of an effort to amend the Missouri Constitution. We are not permitted to substitute our policy judgment for that of the state under the guise of applying the rational relationship test. The Blassman decision expresses this point well:

> [W]ere we to strike down the age minimum requirement here, we would be accomplishing nothing more than substituting our judgment for that of the Illinois

> legislature. . . . Although there might be, as plaintiffs suggest, reasons why the present age minimum is undesirable and good reasons why someone old enough to vote should be old enough to serve on a local school board, those reasons should be presented to the legislature, not to a court.

Id.

We are similarly unpersuaded that four unexplained seatings of underage legislators in the past 170 years amount to an arbitrary enforcement of the minimum age requirement that robs it of its rationality. First, these allegedly improper seatings appear to be isolated mistakes. Seatings of underage legislators have occurred only four times in the last 170 years, the most recent being 55 years ago. The circumstances that might have contributed to the improper seatings are not reflected in the record. For example, appellant has failed to proffer any evidence that the underage legislators were seated because they belonged to the same political party as the Secretary of State. Because there is no explanation of why these representatives were seated, we can only speculate about what caused these four errors. Perhaps there were inadequate birth records or perhaps the Secretary of State failed to check candidate filings for compliance with the minimum age requirement on these four occasions. In the absence of a showing that the minimum age requirement has been selectively enforced to secure partisan political advantage or to exclude representatives based on their exer-

cise of fundamental rights or membership in a suspect class, we hold that the four improper seatings between 1824 and 1935 do not deprive the minimum age requirement of its rationality.

Finally, the minimum age requirement does not run afoul of the rational relationship test merely because the statewide offices of Secretary of State, State Treasurer, and the State Attorney General do not have minimum age requirements. In the absence of an unconstitutional objective or an impermissible means, a state's decision of whether or not to establish a minimum age requirement and what minimum age it designates are policy judgments for the legislature and voters. The framers of the Missouri Constitution were certainly entitled to make the policy judgment that a minimum age requirement was necessary for membership int he Missouri legislature but not for statewide offices. See Vance v. Bradley, 440 U.S. 93, 102 (1979) ("[t]he judgment that the Foreign Service needs [an unusually stringent mandatory retirement policy] more than do many other departments is one of policy, and this kind of policy, under our constitutional system, ordinarily is to be fixed only by the people acting through their elected representatives") (citation omitted). For example, the framers could have believed that a minimum age requirement was not necessary for the statewide offices because all qualified voters cast ballots for these offices and there is likely to be more competition and greater scrutiny of candidates running for such positions. Even assuming that Missouri would be more likely to accomplish its objective of ensuring experienced lawmakers by imposing a minimum age requirement on all political offices, the state certainly

has the right to proceed one step at a time. Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955).

Accordingly, we hold the minimum age requirement is rationally related to the state's legitimate interest in a mature and experienced legislature.

C. Calculation of Life from Date of Conception

Appellant's final contention is that, even assuming the minimum age requirement is constitutional, his age should be calculated from the date of his conception pursuant to Section 1.205.[12] If appellant's age were calculated from the date of his conception, he would be 24 years old at the time he began serving as state representative because his date of conception is prior to November 1, 1966. Section 1.205 includes certain findings made by the Missouri General Assembly that life begins at conception and unborn children have protectable interests in life, health and well-being. Mo. Ann. Stat. §1.205.1(1); Id. §1.205(2). The preamble further requires that the laws of Missouri be "interpreted and construed to acknow-ledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state." Mo. Ann. Stat. §1.205(2).

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[12]Section 1.205 codifies the preamble to the Missouri Senate Committee Substitute for House bill 1596, which was signed into law by the Governor of Missouri in 1986. See Webster v. Reproductive Health Services, 109 S. Ct. 3040, 3047 (1989).

Appellant is asking us to do what the Supreme Court declined to do. In Webster v. Reproductive Health Services, 109 S. Ct. 3040 (1989) (Webster), the Supreme Court refused to decide whether Section 1.205 imposed impermissible restrictions on a woman's decision of whether to terminate her pregnancy. The Court held that "the extent to which the preamble's language might be used to interpret other state statutes or regulations is something that only the courts of Missouri can definitively decide." Id. at 3050. Appellant has presented no evidence that the state legislature intended to change the sensible and time-honored method of calculating age when it enacted Section 1.205. Age has always been calculated from the date of birth, which, unlike the precise date of conception, can be determined with certainty. Because appellant urges us to adopt a counter-intuitive and potentially confusing method of calculating age, we believe it is particularly imperative to follow Webster and leave it to the Missouri courts to decide what legal effect, if any, to give to the preamble to the 1986 Missouri Abortion Act. We, therefore, affirm the district court's decision that appellant's age should not be calculated from his date of conception pursuant to Section 1.205.

CONCLUSION

To summarize, we hold that the minimum age requirement should be evaluated under the rational relationship standard of equal protection review, that the age requirement rationally furthers the state's legitimate interest in ensuring mature and experienced legislators, and that appellant's age should be calculated

from his date of birth rather than from his date of conception. Accordingly, the order of the district court is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF
APPEALS, EIGHTH CIRCUIT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

JOHN STILES, Plaintiff,	)	
v.	)	No. 90-4052-CV-C-5
ROY BLUNT, Secretary of State of the State of Missouri, and WILLIAM WEBSTER, Attorney General of the State of Missouri, Defendants.	)	

ORDER

This Court held a hearing on March 21, 1990 to determine the merits of plaintiff John Stiles' motion for an order preliminarily enjoining the defendants from denying plaintiff Stiles' application for candidacy for the Missouri state House of Representatives. Plaintiff Stiles applied to be on the Democratic ballot for the August, 1990, 119th Legislative District primary election for the Missouri House of Representatives.

This Court at the March 21, 1990 hearing heard evidence, which by agreement of the parties, went to

this Court's consideration of granting both preliminary and permanent injunctions. This Court denied plaintiff Stiles' motion for a preliminary injunction, and further found that defendants' refusal to allow plaintiff Stiles a place on the ballot did not violate plaintiff Stiles' constitutional rights. This Court, therefore, found that a permanent injunction was not warranted and dismissed the cause of action.

FINDINGS OF FACT

1. Plaintiff Stiles is a resident of Windsor, Henry County, Missouri, and is a taxpayer and a registered and qualified voter of Windsor, which is located in the 119th Legislative District of Missouri. Plaintiff Stiles is a taxpayer and a registered and qualified voter of the United States, is a member of the Democratic party, and is otherwise qualified to hold the office of Missouri state representative.

2. Plaintiff Stiles' date of birth is April 11, 1967.

3. Plaintiff Stiles' date of conception is prior to November 1, 1966.

4. Defendant Roy Blunt was and is the qualified and acting Secretary of State of Missouri.

5. Defendant William Webster is the qualified and acting Attorney General for the State of Missouri.

6. Plaintiff Stiles, on January 9, 1990 at the office of the Secretary of State in Jefferson city, Missouri, made a timely offer for filing his candidacy for the office of state representative on the Democratic party ballot.

7. Plaintiff Stiles was the first candidate to make a timely offer for filing his declaration of candidacy for state representative of the State of Missouri from the 119th Legislative district.

8. Defendant Secretary of State in a letter dated January 9, 1990 acknowledged receipt and denied plaintiff Stiles' declaration of candidacy. The denial was pursuant to Article III, Section 4 of the Missouri Constitution, because plaintiff Stiles would not be twenty-four (24) years of age at the time of the swearing in for office of the winners of the election.

9. The Missouri House of Representatives has seated persons under the age of twenty-four on the following occasions:

(a) Spencer Pettis, age 22, of St. Louis, was seated in 1824;

(b) John B. Henderson, age 22, of Pike County, was seated in 1848;

(c) Joseph Pulitzer, age 22, of St. Louis, was seated in 1870;

(d) Carleton Fulbright, age 22, of Ripley County, was seated in 1935.

10. There are no age requirements for the Missouri state offices of Secretary of State, Attorney General, or State Treasurer.

11. Qualified voters exist in the 119th Legislative District of Missouri who believe plaintiff Stiles to be a viable and qualified candidate, and who wish to be able to consider plaintiff Stiles as a candidate in order to cast their votes effectively.

FINDINGS OF LAW

1. Application of Article III, Section 4 of the State of Missouri and Section 21.0880 of the Revised Statutes of Missouri to temporarily prevent plaintiff Stiles from being placed on the ballot as a candidate for state representative for the state of Missouri from the 119th Legislative District until he is twenty-four (24)

years of age is not a violation of the fundamental rights of free speech, voting, and participation in government as guaranteed by the first, fifth and fourteenth amendments to the United States Constitution enjoyed by the voters of the 119th Legislative District.

3. The state statute requiring a Missouri state representative to be twenty-four (24) years of age does not discriminate against a suspect class, and the statute is valid as rationally related to the state's legitimate interest in having qualified state representatives.

4. Age, for the purpose of determining eligibility for candidacy for Missouri state representative, should not be calculated pursuant to that portion of Mo. Rev. Stat. §1.205 (1986) stating the life begins at conception.

5. The citizens of the state of Missouri have adopted age limits for serving in the Missouri House of Representatives, and it is not the role of a federal court to intrude into matters best left to the citizens of the state and to the state legislature.

Therefore, it is hereby

ORDERED that plaintiff John Stiles' motion for an order preliminarily enjoining defendants from not certifying plaintiff Stiles as a Democratic candidate in the August 1990 primary for the House of Representatives is denied. It is further

ORDERED that this cause of action is dismissed for failure to state a claim upon which relief can be granted.

SCOTT O. WRIGHT
United States District Judge

March 22, 1990.